

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,  
  
-against-  
  
YELENA FAINSHTEIN,  
  
Defendant.

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 10/18/16

OPINION AND ORDER  
“  
15 CR 527 (KMW)

Petitioner Yelena Fainshtein (“Petitioner”) has moved pursuant to 28 U.S.C. § 2255 to change her imposed eight month prison term to an eight month term of house arrest, based on her high-risk pregnancy, depression and other physical and psychological problems, and difficulties her children would face if she were incarcerated.

There are two bars to her petition. First, in Petitioner’s written plea agreement, she waived any right to challenge her sentence under 28 U.S.C. § 2255. Second, even if her petition were not barred by her plea agreement, it is unavailable under the case law interpreting 28 U.S.C. § 2255, which requires a petitioner to demonstrate legal or jurisdictional infirmity (or other extraordinary circumstances not present here) in her original sentencing in order to prevail.

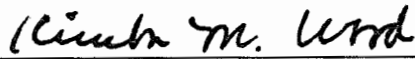
The author of Petitioner’s brief, Jonathan Marc Davidoff, mischaracterizes the most relevant case law. At page 5 of his memorandum of law, he states that when family circumstances are unusual or extraordinary, “. . . the Court has the discretion to *modify* a prison sentence.” Petitioner’s Motion to Modify Defendant’s Sentence, at 5. Mr. Davidoff then cites three decisions that have nothing to do with modification of sentences - - each relates to granting downward departure from the Sentencing Guidelines at sentencing - - not modifications of sentences.

The Court denies the motion to modify Petitioner's sentence, and denies Petitioner's request for an extension of her surrender date. She shall surrender to the facility designated for her by the Bureau of Prisons on November 7, 2016.

The Court hereby recommends that the Bureau of Prisons consider designation of Petitioner to a facility that can provide appropriate care during her high-risk pregnancy, and her psychiatric problems.

SO ORDERED.

Dated: New York, New York  
October 18, 2016

  
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THE HON. KIMBA M. WOOD  
United States District Judge